

No. 6946

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

MINA H. JOHNSON, SIGMUND BEEL, and A. G.  
BRODIE,

*Appellants,*

vs.

F. E. HORTON, FRANK HORTON, JR., R.  
McCARTHY, A. F. PRICE, WEEPAH HORTON  
GOLD MINES COMPANY, a corporation organ-  
ized and existing under the laws of the  
State of Nevada, IVEN T. JEFFRIES, O. U.  
PRYCE, and P. N. PETERSEN,

*Appellees.*

APPELLANTS' PETITION FOR A REHEARING.

MAURICE E. GIBSON,

Russ Building, San Francisco,

*Attorney for Appellants  
and Petitioners.*

FILED

APR 12 1933

PAUL P. O'BRIEN



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*To the Honorable Curtis D. Wilbur, Presiding Judge,  
and to the Associate Judges of the United States  
Circuit Court of Appeals for the Ninth Circuit:*

Come now the appellants, Mina H. Johnson, Sigmund Beel, and A. G. Brodie, in the above-entitled and numbered case and respectfully petition and pray that this Honorable Court will rehear and reconsider its judgment or decree made and entered on the 20th day of March, 1933, affirming the judgment or order of the District Court of the United States, in and

for the District of Nevada, dismissing the amended bill of complaint and the supplemental bill of complaint on file herein, and that this Honorable Court will reverse the judgment of the Honorable District Court on the following grounds, to-wit:

The amended bill of complaint and supplemental bill of complaint, it is respectfully submitted, state a cause of action in equity and your denial of the right of appellants to proceed to enforce their rights through this equitable proceeding leaves them helpless, with no adequate remedy at law.

It is submitted there is no action or series of actions that appellants can initiate or prosecute at law which will afford them the relief to which they are entitled, and that every consideration of public policy dictates that the rights of appellants herein should be adjudicated in one suit in equity with the Chancellor having jurisdiction of the entire subject matter of the litigation.

With all due respect to your Honors' opinions herein, it is submitted that your reliance on the general rule that, the title to a corporate office is not usually tried in a Court of Equity, to decide this case is not justified by the facts pleaded or the inferences reasonably to be drawn therefrom; for the reason that the instant case goes beyond the intendments of that general rule and presents a situation in which effect should be given to the many exceptions to the rule rather than the rule itself.

For the foregoing reasons it is respectfully urged that the judgment heretofore rendered by this Court

affirming the order of dismissal of the lower Court  
be set aside and a rehearing granted.

Dated, San Francisco,  
April 19, 1933.

MAURICE E. GIBSON,  
*Attorney for Appellants  
and Petitioners.*

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CERTIFICATE OF COUNSEL.

I hereby certify that I am counsel for appellants  
and petitioners in the above entitled cause and that  
in my judgment the foregoing petition for a rehear-  
ing is well founded in point of law as well as in fact  
and that said petition for a rehearing is not inter-  
posed for delay.

Dated, San Francisco,  
April 19, 1933.

MAURICE E. GIBSON,  
*Counsel for Appellants  
and Petitioners.*

